BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: RACHEL A. Claimant, vs. FAR NORTHERN REGIONAL CENTER, Service Agency.	OAH No. 2005100534

DECISION

Administrative Law Judge Catherine B. Frink, State of California, Office of Administrative Hearings, heard this matter in Chico, California on April 17, 2006 and April 19, 2006.

Rachel A. (claimant) was represented by Christian M. Knox, Attorney at Law, Law Office of F. Richard Ruderman, 2020 Hurley Way, Suite 405, Sacramento, California 95825.

Phyllis J. Raudman, Attorney at Law, 1716 Court Street, Suite 101, Redding, California 96001, represented the service agency, Far Northern Regional Center (FNRC).

Evidence was received, the hearing was closed, and the matter was submitted for decision on April 19, 2006.

PARTIES AND JURISDICTION

Claimant makes a claim for services pursuant to Welfare and Institutions Code section 4512.[1] She appeals FNRC's denial of her claim for services as set forth in its Notice of Proposed Action (NOA), effective date October 6, 2005.

[1] All statutory references are to the California Welfare and Institutions Code unless specified otherwise.

All prehearing jurisdictional requirements have been met. Jurisdiction for this proceeding exists.

ISSUE

Within the meaning of section 4512, subdivision (a), is claimant disabled due to mental retardation, or does claimant have a disabling condition found either to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation?

FACTUAL FINDINGS

1. Claimant was born on September 4, 1987 and was age 18 years, 7 months as of the date of hearing. She has never been diagnosed with cerebral palsy, epilepsy, or autism.

2. Claimant has an older sister, who was born on January 17, 1984. Claimant's sister is a client of FNRC, with a diagnosis of mild mental retardation.

3. Claimant has been in and out of foster care since age 2. She was removed from the care of her mother due to patterns of neglect and her mother's recurrent methamphetamine abuse.

4. The first cognitive evaluation of claimant took place on February 5, 1990, when claimant was age 2 years, 5 months (29 months). Claimant was residing with her father and older sister. Claimant was referred to the Butte County Office of Education (BCOA) Early Education Home Program because of suspected general delays. Linda Beck, Early Education Home Teacher, conducted the evaluation, using the Battelle Developmental Inventory and the Denver Developmental Screening Test, as well as parent report, direct observation, and previous assessment. Claimant demonstrated developmental delays primarily in the personal-social, communication, and adaptive domains. Her gross motor skills were age appropriate; her Battelle fine motor scores were at the 15th percentile. Her level of cognitive functioning at the time of testing was in the mildly delayed range. Ms. Beck recommended placement in the Early Education Home Program.

5. Claimant was made provisionally eligible for FNRC services, with a designation of "mental retardation-mild." She participated in the Early Education Home Program from February 7, 1990 to September 4, 1990, when her father requested she be withdrawn to attend Palermo Children's Center preschool.

6. In the fall of 1990, when claimant was about three years old, claimant's sister alleged that she was molested by their father. Both girls were removed from their father's custody, and were placed under the care of Child Protective Services (CPS). Claimant was

placed in several different foster homes. The foster parents were unable to care for claimant due to her defiant and aggressive behaviors.

7. On January 7, 1991, Shirley Goodgame, School Psychologist intern, evaluated claimant and prepared a report of assessment on behalf of BCOE. Claimant was age 3 years, 4 months at the time of the assessment. Claimant had been previously assessed at Palermo Children's Center on September 25, 1990 and on October 18, 1990, by Susan Birtcil, Speech and Language Pathologist, and was found to be significantly delayed in language. Claimant was referred to the Butte County Communicatively Handicapped Program. At the time of the January 1991 assessment, claimant and her sister were living in foster care, with CPS as their legal guardian. Ms. Goodgame administered a number of tests, including the Developmental Test of Visual Motor Integration (VMI), a paper-and-pencil test of visual perception and motor coordination; the Kaufman Assessment Battery for Children (K-ABC), a standardized test of cognitive functioning; and the Vineland Adaptive Behavior Scales (VABS), a standardized inventory of communication, daily living, socialization, and motor skills. Claimant's Mental Processing Composite score on the K-ABC was the equivalent of an Intelligence Quotient (IQ) score of 78, which is in the "borderline" range of intellectual functioning. Ms. Birtcil conducted testing in the areas of articulation, receptive and expressive language. Ms. Goodgame concluded that claimant had "average cognitive functioning and significant delays in language." It was recommended that claimant be placed in a Special Day Class (SDC) for children with communication handicaps (CH).

8. Claimant received a behavior assessment referral on February 28, 1991, after her enrollment in a CH class at Mesa Vista School. Under "Problem Behaviors," the referral stated, "Needs 1:1 due to grabbing, knocking things down, runs away, destroys property, bites others, non-verbal, short attention span, aggressive." Claimant moved to Loma Vista School in the fall of 1991.

9. While a client of FNRC, claimant came under the care of Grady R. Fort, M.D., FNRC Medical Director. Dr. Fort medically examined claimant on February 26, 1991. Dr. Fort's medical examination report noted, "Borderline skills for age, should still be followed carefully to watch for overall achievement."

In a letter dated November 20, 1991, Dr. Fort noted claimant's behaviors were consistent with ADHD, and recommended a trial of medication, funded by FNRC. Claimant was given Cylert, which worsened her behavior, and then Ritalin, with minimal improvement. In a follow-up note dated May 12, 1992, Dr. Fort stated in part:

> [Claimant] recently lost her [foster] placement because of her ADHD symptoms and was only in another foster home for three weeks because of ongoing problems. Not all symptoms appear to be ADHD related. There is certainly more aggressive behavior than I usually see in this disorder….

10. *Report of Randy M. Haapanen, Ph.D.*

A. At the request of Dan Katz, claimant's case worker with the California Department of Social Services, Adoptions Branch, claimant and her sister were evaluated by Randy M. Haapanen, Ph.D., a clinical psychologist, in June of 1992. Claimant was age 4 years, 9 months at the time of the evaluation. Dr. Haapanen prepared a report dated June 30, 1992, which noted the diagnoses of "Reactive Attachment Disorder of Infancy or Early Childhood [RULE OUT: Post-traumatic Stress Disorder" and "developmental disorder (not otherwise specified)."]

B. Dr. Haapanen had great difficulty administering tests to claimant due to her impulsive, self-directed behaviors. He described her conduct as "unmanageable." She was generally unresponsive to Dr. Haapanen's statements and questions when he attempted to engage her in conversation, and toys had to be taken away from her to redirect her attention. Dr. Haapanen administered the Peabody Picture Vocabulary Test – Revised (Peabody), the VMI, the Kinetic Family Drawing, and the Roberts Apperception Test (attempted). On the Peabody, claimant achieved a standard score of 88, which placed her in the low average range for recognition of vocabulary. Her score on the VMI was in the average to low average range. While acknowledging that the data was limited because of her resistance to tasks presented, Dr. Haapanen concluded that claimant's intellectual and visual-motor development was "within the broad range considered normal." He noted that one area of developmental delay or dysfunction apparent from the testing was in claimant's social interactive skills. Dr. Haapanen did not believe claimant's willfulness was typical of the "strong-willed child," but rather "made her almost impossible to work with and seemed alarmingly unusual and dysfunctional." Based on interviews with her then-current foster mother, and her prior foster mother, with whom claimant had lived for 13 months, Dr. Haapanen concluded that claimant had not been able to form emotional attachments with the members of her foster families.

C. Dr. Haapanen concluded that claimant was experiencing a "severe attachment disorder," and "it is likely that she will manifest severe problems in her behavior in the form of resistance to and non-compliance with rules and expectations." He "strongly" recommended that "a highly structured environment be considered as a placement for [claimant]." He stated his belief that "it may not be possible to find such an environment outside of a residential setting."

11. Notwithstanding the recommendation of Dr. Haapanen, claimant remained in foster placement, with at least three different placements between the summer of 1992 and the spring of 1993. In the spring of 1993, claimant was placed at the home of Jody Jamison, where she resided until February of 1995.

12. Claimant remained in the CH program at Loma Vista School from fall 1991 until October 19, 1992, when claimant's IEP team decided that her special needs were not specific to speech and language issues. She was manifesting severe behavior problems at

school. In November 1992, claimant was placed in a SDC kindergarten class for severely emotionally disturbed (SED) students at Parkview School.

13. A Psycho-Educational Study prepared by B. Zubia, psychologist, Chico Unified School District (CUSD) on January 20, 1993, noted that claimant was age 5 years, 5 months, in kindergarten, with below average-to-borderline cognitive test results, (distractibility and short attention span noted), and with academic skills at the preschool level.

14. In a report dated March 1, 1993, David L. Sorenson, LCSW, Mental Health Clinician with Butte County Mental Health Services, Youth Treatment Services, recommended that claimant be placed in the Day Treatment Program at Loma Vista School, in that she appeared to need mental health services in conjunction with academic services. Mr. Sorenson's report noted that, even after her placement in a SED SDC, claimant "did not appear to have the ability to thrive in even a special education program due to her inability to engage socially with school staff or peers in an enriched environment. She appears to require additional support in order to make strides academically." Claimant was extremely disruptive in the classroom and demanded constant attention.

15. The evidence did not establish whether or not claimant was placed in the day treatment program at Loma Vista pursuant to Mr. Sorenson's recommendation

16. Claimant continued to be a client of FNRC. On March 29, 1994, Marcia Werner, Service Coordinator, FNRC, prepared a semiannual report for the period October 1993 through March 1994.[2] The report stated that claimant was attending a SED classroom at Marigold School. The report concluded, "[Claimant's] case will be reviewed for FNRC eligibility after an updated psychological evaluation is obtained either from the schools or through FNRC." No immediate action was taken to review claimant's eligibility for regional center services.

17. Claimant was retained in kindergarten for the 1993-1994 school year, in a SED SDC. In the fall of 1994, claimant was mainstreamed into a regular first grade program at Biggs Elementary School, with a one-to-one aide and resource specialist programming one half hour per day. This placement was not successful, and she was put into a small, self-contained SDC.

18. *Reports of Janet Rauch, Ph.D.*

A. Janet Rauch, Ph.D., a clinical psychologist, performed an evaluation of claimant on September 26, 1994, during which she administered the Test of Variable Attention (TOVA). In her report dated October 11, 1994, she noted that claimant's test results were consistent with a high level of ADHD. She further found that claimant's extensive number of omission and inattention errors was suggestive of a neurological and/or

[2] Erroneously referred to in the report as "10/93 through 3/93."

neuropsychological impairment, in that claimant "was looking toward the stimulus [during testing] and not seeing it."

B. In a report dated November 15, 1994, Dr. Rauch recommended that claimant be placed in "the most clinically sophisticated residential facility possible." Dr. Rauch noted that claimant had developed some emotional attachment to her foster mother, Jody Jamison, but that Ms. Jamison "has hit the same 'behavior and disturbance' wall that all others reached before her." Claimant "needs more help than can be given to her in a family home."

19. Dr. Paul M. Chretien, a pediatric neurologist, examined claimant on November 21, 1994 and December 13, 1994, for evaluation of Attention Deficit Hyperactivity Disorder (ADHD). Dr. Chretien reviewed multiple outside records, and met with claimant's foster mother, Jody Jameson; claimant's foster care social worker, Judith Sager; and Rod Graf, from CPS. Dr. Chretien's diagnostic impression was: "static encephalopathy[3] consisting of ADHD with co-morbidity which most probably stems from in utero drug and alcohol exposure with augmentation due to psychosocial factors." He observed that claimant's ADHD "has failed treatment with Ritalin and Cylert, which is not uncommon when co-morbidity exists." Claimant's neurologic exam "[was] remarkable for psychomotor retardation with expressive disfluency and ADHD with features of a conduct disorder." Dr. Chretien noted that, "[d]ue to the conduct disorder, [claimant] is likely to lose her current foster placement." Dr. Chretien recommended a trial of Clonidine; if unsuccessful, the Dr. Chretien recommended residential placement and psychiatric supervision for Phenothiazine use. Claimant's electroencephalogram (EEG) was normal.

20. After she received a copy of Dr. Chretien's December 13, 1994 report, Ms. Sager wrote a letter to Mr. Grap, dated December 29, 1994, in which she stressed the urgency of finding an out-of-home placement for claimant. Her report states, in part:

> According to Dr. Chretien, the damage to the frontal lobe of [claimant's] brain (caused by her mother's use of methamphetamines during pregnancy) has so impaired her ability to perform the higher level functions that we call judgment or conscience that [claimant] is left with a toddler-level ability to control her own emotions, choices, and behavior. It is Dr. Chretien's opinion that medication such as Clonidine may blunt some of the effects of this condition, making it easier to manage [claimant's] behavior and perhaps allow her to learn some self-management, but medication will not improve her ability to develop the judgment, insight, and conceptual ability to make behavioral choices based on meaningful decisions. Barring a miraculous improvement, [claimant] will remain an

[3] "Encephalopathy" is defined in Dorland's Illustrated Medical Dictionary (25th ed. 1974) at page 514, as "Any degenerative disease of the brain." "Static" is defined as "Not in motion, not dynamic," (Dorland's Illustrated Med. Dict., *supra*, at p. 1468) i.e., not changing.

individual with near-average intellectual and motor function, but with a toddler's judgment, conscience, and self-control.

21. *Report of David M. Presnall, Ph.D.*

A. Claimant underwent a psychological evaluation by David M. Presnall, Ph.D., a clinical psychologist in Sacramento, California, on January 17, 1995, when claimant was age 7 years, 4 months, and in the first grade. Dr. Presnall thereafter prepared a Psychological Evaluation Report, on an exact date not established by the evidence. Dr. Presnall administered the Wechsler Intelligence Scale for Children, Third Edition (WISC-III); the Developmental Test of Visual Motor Integration; Kinetic Family Drawing; Roberts Apperception Test for Children; Burks' Behavior Rating Scale; and the Conners' Continuous Performance Test (CPT). He also interviewed Judith Sager, M.S., claimant's counselor and case manager at Northern California Youth and Family Programs.

B. At the time of the evaluation, claimant was residing in foster care with Jodie Jamison. In addition, claimant had been placed in an alternative foster placement three days a week due to her "excessive behavioral demands."

C. Dr. Presnall characterized claimant's style of social interaction as "somewhat excitable and reactive." She was "at times quite impulsive and excessively demanding."

D. On the WISC-III claimant performed in the low average range. She earned a verbal IQ score of 88, a performance IQ score of 80, and a full scale IQ score of 83, with subtest scores as follows:

Verbal Tests		**Performance Tests**	
Information	6	Picture Completion	5
Similarities	7	Coding	8
Arithmetic	6	Picture Arrangement	8
Vocabulary	10	Block Design	7
Comprehension	10	Object Assembly	6
Digit Span	8	Symbol Search	6

Verbal Comprehension	27
Perceptual Organization	9
Freedom from Distractibility	7
Perceptual Speed	18

E. Dr. Presnall noted that claimant showed significant deficits in cognitive functioning related to perceptual organization and sustained concentration and attention. Dr. Presnall's report stated, "These skill deficits do suggest an underlying neurologic dysfunction, quite possibly related to frontal lobe dysfunction." Claimant's strengths were in expressive language ability, with a relatively broad working vocabulary. However, her

judgment, as applied to social problem solving activities, is "comparatively weaker." Her capacity for more abstract reasoning and reflective thinking is "moderately impaired."

F. Claimant's achieved an age-equivalent score of 7 years, 2 months on the Developmental Test of Visual Motor Integration. Dr. Presnall attributed her relatively high level of achievement on this test to the structure and guidelines provided by the test.

G. On the Roberts Apperception Test for Children, claimant's themes expressed a sense of loss and a fear of separation. Dr. Presnall interpreted claimant's Kinetic Family Drawing as expressing "a need to belong but also a sense of demanding excessive attention from supportive adults." Judith Sager provided the information for the Burks' Behavior Rating Scale, with claimant demonstrating significant elevations in the following areas: poor attention; poor academics; poor impulse control; excessive resistance; poor social conformity; and excessive dependency.

H. Dr. Presnall's diagnostic impressions were: ADHD, Reactive Attachment Disorder (RAD); and Organic Personality Disorder (provisional). He concluded that claimant presented "marked difficulties in impulse control, social judgment and planning, resulting from a longstanding history of both abuse and early environmental deprivation." He recommended placement in a SDC for severely emotionally disturbed primary age students; treatment with medication directed toward reducing claimant's impulsivity, and improving focus and concentration; individual therapy to address impulse control; and additional support for claimant's foster parent, including behavior management strategies.

22. On February 27, 1995, claimant was placed at the River Oaks Children's Treatment Program, a nonpublic school, in Sacramento. Claimant was age 7 years, 6 months at the time of placement, which was approved and funded by Butte County CPS.

23. On March 8, 1995, Jeanette Luttman at Alta California Regional Center (ACRC) sent a fax transmittal memo to Kathy Powers at FNRC, stating in part: "Recommend that you send N.O.A.[4] as Alta has determined client is not eligible." Notwithstanding this memo, on June 9, 1995, FNRC Service Coordinator Marcia Werner prepared a Transfer Summary requesting shared management services from ACRC while claimant was residing in Sacramento.

24. ACRC conducted an eligibility review on September 12, 1995, when claimant was 8 years old. The ACRC interdisciplinary (ID) team concluded, based on a review of reports and records, that claimant suffered from an ineligible condition, namely ADHD, and did not have a qualifying disability under applicable statutes and regulations. On the ID Team Summary Sheet, dated September 12, 1995, it is noted that ACRC was not paying for services for claimant at that time. The ID team outcome and plan stated, in part: "Supervising Counselor recommended service coordinator not send any Notice of Action to anybody but rather notify Far Northern Regional Center that we are closing [claimant's] case

[4] Notice of Action.

as she is no longer eligible for Regional Center services with a copy of that letter to Butte County." FNRC was not notified of ACRC's action until March 8, 1996, when ACRC Service Coordinator Jeanette Luttman transmitted a copy of the ID Team Summary Sheet to Kathy Powers at FNRC, with the following handwritten notation:

> Kathy,
> I just found this as I was reviewing my notes. Now I am confused about my supervisor's recommendations. I don't know how Alta could close the case without somebody sending a N.O.A.
> Jeanette

In a subsequent letter, dated March 14, 1996, Ms. Luttman confirmed a telephone conversation with Ms. Powers, in which ACRC recommended that claimant's case be closed as "not eligible." Ms. Luttman specifically noted the report of Dr. Presnall, which listed claimant's full scale IQ as 83, in the low average range of intelligence. Inasmuch as the issue of eligibility rested ultimately with FNRC, Ms. Luttman was recommending that FNRC send out a NOA if it agreed with ACRC's recommendation, giving claimant's legal guardian (i.e. CPS) an opportunity to file for fair hearing.

25. FNRC held a Core Staff Conference concerning claimant's eligibility for regional center services on March 20, 1996. The following core staff members were present: the Executive Director; the Associate Director; a physician; a nurse consultant; a psychologist; the case management supervisor; and the service coordinator. After a review of records and reports, the core staff recommended that claimant's case be closed because claimant was not developmentally disabled. On April 1, 1996, FNRC sent a NOA to Mr. Grap at Butte County CPS notifying him that FNRC core staff found claimant to be no longer eligible for regional center services, effective May 14, 1996. On April 18, 1996, Mr. Grap filed a fair hearing request on claimant's behalf. FNRC held an Informal Meeting on May 7, 1996, attended by Mr. Grap. FNRC issued a written decision, dated May 15, 1996, sustaining the finding that claimant is not eligible for regional center services, based on evidence that claimant's conditions are primarily related to learning and psychiatric disorders that are specifically excluded from coverage as qualifying conditions under applicable regulations. Claimant did not pursue a further appeal.

26. Claimant remained at River Oak/Laurel Hills nonpublic school for about 18 months. On March 3, 1996, while claimant was in the second grade, she took the Woodcock Johnson Test of Achievement– Revised (WJ-R). Claimant received the following grade equivalent scores: Reading Cluster—GE K.5;[5] Math Cluster—GE 1.6; Written Language Cluster – GE 1.0; General Knowledge—GE 1.7. An IEP meeting conducted by the San Juan Unified School District on March 20, 1996 indicated that claimant's eligibility category for special education services was "seriously emotionally disturbed." It was noted that claimant's "emotional disturbance continues to impact educational performance." Claimant

[5] K.5 refers to the fifth month of kindergarten; 1.6 refers to the sixth month of first grade, etc.

was taking Ritalin and Clonidine. The IEP team notes reflect that "the long range plan is to place [claimant] with the foster parent and arrange for guardianship. This is contingent on foster family's ability to manage [claimant's] behavior." The IEP team recommended that claimant remain in the current program at River Oak. However, it was felt that claimant's cognitive deficits were not being addressed by the River Oak program, and claimant was placed back in foster care with Jody Jamison, where claimant's sister also resided.

27. Claimant's return to Ms. Jamison's foster home was disruptive to claimant's sister and the rest of the family. In the fall of 1996, when claimant was nine years old, she came to reside with Debra Simpson. She received counseling services from Dr. Janet Rauch. In the fall of 1997, when claimant was in the fourth grade, she was enrolled in the LH SDC at Neal Dow School. Claimant underwent cognitive testing and adaptive behavior evaluation in 1998, conducted by CUSD, and achieved the following scores:

Cognitive Testing

WISC-III	Verbal	89	Performance	84	Full Scale	86	
VMI	86						
WJ	Processing Speed	72	Short Term Memory	85			

Adaptive Behavior

Communication	77	Daily Living	92	Socialization	102

28. *March 5, 2001 Psycho-Educational Study*

A. Pamela Beeman, CUSD psychologist, prepared a psycho-educational study of claimant, dated March 5, 2001, as part of a routine three-year review of special education services. At the time of the assessment, claimant was age 13 years, 6 months, and was in the seventh grade at Bidwell Junior High School. Claimant was placed in a SDC for math, science, history, and English. Claimant's SDC teacher, Sherri Phelan, administered the WJ-R to claimant on February 23, 2001. Claimant achieved the following scores:

Achievement Cluster	Standard Score (Range)	%ile Rank
Letter-Word Identification	94	35
Passage Comprehension	100	50
BROAD READING	96 (92-100)	40
Calculation	76	6
Applied Problems	88	21
BROAD MATHEMATICS	79 (75-83)	8
Dictation	67	1
Writing Sample	79	8
BROAD WRITTEN LANGUAGE	73 (67-79)	3

B. Ms. Beeman administered the Naglieri Draw A Person to claimant, which was scored quantitatively for cognitive ability. Ms. Beeman reported that, "[Claimant's] scaled score was 97, which is within average limits and somewhat higher than previous estimates." The full WISC-III was not administered to claimant. However, Ms. Beeman gave claimant two of the "factors" of the WISC-III, which examine areas of learning strength and weakness and possible processing difficulties; she also administered the "Information" subtest, for which claimant had previously received a low score of "6." Claimant achieved the following scores:

Freedom from Distractibility (FD)		78
Arithmetic	4	
Digit Span	8	
Processing Speed (PS)		61
Coding	4	
Symbol Search	1	
Information subtest	8	

C. Ms. Beeman concluded that "this pattern of scores shows continuing difficulty with timed paper and pencil matching and copying ('processing speed')." In addition, "the Distractibility factor may be affected by arithmetic knowledge."

D. It was noted in the report summary that claimant "continues to take medication (Adderall and Clonidine) for concentration and attention, but has been served under the 'SLD' category rather than Emotionally Disturbed since 4th grade." Ms. Beeman concluded:

> Current testing indicates improvement in cognitive as well as social and behavioral areas in response to a stable foster home. [Claimant] shows continuing difficulty with processing speed, which appears as an area of specific learning disability.

29. *Report of Sidney Ganzler, Ph.D.*

A. Claimant has received on-going mental health services through the Chico Counseling Center office of Butte County Youth Services. In May of 2004, Helene Ginsberg, a clinician at Butte County Youth Services, referred claimant to Sidney Ganzler, Ph.D., a psychologist with Butte County Department of Behavioral Health for a psychological evaluation to evaluation the following areas: claimant's intellectual, educational achievement, and adaptive behavior levels; and emotional, behavioral regulation, and other mental health issues. Dr. Ganzler conducted his evaluation on May 4, 2004 and May 6, 2004. He prepared a report dated May 8, 2004. Claimant was age 16 years, 8 months, and in the tenth grade, at the time of the evaluation.

B. Dr. Ganzler reviewed records, interviewed claimant and her foster mother, Debra Simpson, and administered the following tests: the Wide Range Intelligence Test (WRIT); the Adaptive Behavior Assessment System (ABAS); the Wide Range Achievement Test, Expanded Edition (WRAT-Exp); the Behavior Rating Inventory of Executive Functions (B.R.I.E.F.); the Self-Esteem Index (SEI); the Social Skills Rating System (SSRS); and the Personality Inventory for Children, Second Edition (PIC-2).

C. The WRIT is a focused evaluation of intellectual functioning, similar to the WISC. Claimant achieved a verbal IQ score of 70, a visual IQ score of 84, and a General IQ score of 73 on the WRIT, with the following subtest scores:

Verbal Subtests Language-Based Skills		**Visual Subtests Visual-Fine Motor Based Skills**	
Verbal Analogies	76	Matrices	78
Vocabulary	70	Diamonds	95

D. On the ABAS, a measure of adaptive behavior, Dr. Ganzler relied on information provided by Debra Simpson. According to Dr. Ganzler's report, a General Adaptive Composite (GAC) of 70 or below is an indication of significant impairment. Claimant achieved a GAC of 60, with the following scaled scores:

Adaptive Skill Areas	**SS**	**Adaptive Skill Areas**	**SS**
Communication	02	Leisure	05
Community Use	07	Self-Care	02
Functional Acad.	04	Self-Direction	02
Home Living	06	Social	02
Health & Safety	03	Work	**

E. On the WRAT-Exp, a measure of educational achievement, claimant achieved the following standard scores: Reading—73; Math—69; Composite—71. Significant delay is indicated by scores of 70 or below.

F. Based upon the average standard scores for the tests of intellectual functioning, academic achievement, and adaptive behavior, Dr. Ganzler derived a number, which he called the overall "grand mean," which in claimant's case, was calculated as "68."

G. Dr. Ganzler measured claimant's executive functions using the B.R.I.E.F., which is based on a parent or teacher survey. In this case, Debra Simpson provided the information for the test. This test indicates a higher level of impairment with higher scores. Clinically significant results are reflected in T-scores above 60. The Behavior Regulation Index (BRI) represents the person's ability to shift his/her cognitive set and modulate emotions and behavior through the use of appropriate inhibitory control. The Metacognition Index (MI) expresses the person's ability to effectively initiate, plan, organize, review, and

sustain his/her future-oriented problem solving by keeping the components within working memory. Claimant achieved a Global Executive Composite (GEC) T-score of 95, placing claimant in the 99th percentile, or highly impaired. Claimant achieved the following subtest scores:

Scale/Index	T-Score	Percentile
Behavior Regulation		
Inhibit (Behavior)	98	99
Shift	75	98
Emotional Control	95	99
BRI	93	99
Metacognition		
Initiate	83	99
Working Memory	92	99
Plan/Organize	87	99
Organization of Materials	71	99
Monitor	91	99
MI	95	99

H. Dr. Ganzler noted that claimant's verbal IQ score of 70 on the WRIT placed claimant at the low borderline range; her visual IQ score of 84 was "near the middle of low average." The general (full scale) IQ of 73 "is at the lower end of the Borderline range." Claimant's educational achievement, as measured on the WRAT-Exp, was consistent with her cognitive level, in that her composite score of 71 was very close to the full-scale IQ score of 73. Claimant's ABAS score of 60 represented a level of functioning in the mildly delayed range. Dr. Ganzler's report further stated, "It's quite probable that this relatively low level of adaptive behavior is also expressive of [claimant's] considerable difficulties with executive functioning." Dr. Ganzler concluded: "The overall **Grand Mean of 68** for the intellectual, academic, and adaptive areas in the range of Mild Retardation. This overall level of cognitive-adaptive functioning is not adequately explained by emotional factors." In Dr. Ganzler's opinion, "[g]iven the combined consequences of her cognitive levels, academic achievement levels, adaptive behavior, and executive dysfunction, it is extremely difficult to imagine that [claimant] could be successful in independent living without some definite supports, guidance, and access to specialized programs for learning-challenged people."

30. On October 14, 2004, Maralee Salamon, a social worker with Butte County Children's Services, transmitted the May 8, 2004 report of Dr. Ganzler to FNRC with a request that claimant be reevaluated for regional center services. FNRC core staff met on October 27, 2004, to discuss claimant's eligibility. The core staff considered the report of Dr. Ganzler (Finding 29), as well as the 1995 report of Dr. Presnall (Finding 21). The core staff concluded that there was "not sufficient evidence to open a new referral." Approximately one year later, on October 6, 2005, FNRC issued a NOA denying claimant's eligibility for FNRC services, stating that, "[claimant] does not have mental retardation and shows no evidence of epilepsy, cerebral palsy, autism, or other conditions similar to mental

retardation and requiring treatment similar to that required by mentally retarded individuals." On October 12, 2005 and October 13, 2005, the FNRC core staff reconsidered the issue of claimant's referral for consideration of eligibility for regional center services, and again declined to initiate a new intake. A request for fair hearing was filed on claimant's behalf on October 18, 2005.

31. *Report and testimony of Mike Carroll*

A. Mr. Carroll is a school psychologist with CUSD. He coordinates testing for special education and performs mandated special education reviews. Mr. Carroll has observed claimant's behavior in the classroom, and has weekly interaction with her. His interaction with her prior to 2006 was primarily for behavior and discipline problems.

B. Mr. Carroll performed psychological testing with claimant, after claimant told him there was an issue about her eligibility for regional center services. He reviewed claimant's school file, which did not contain Dr. Ganzler's report. The last IQ test results in claimant's file were from 1995.

C. Mr. Carroll performed a psycho-educational study of claimant at claimant's request on January 25-26, 2006. Claimant was age 18 years, 4 months and in the 12th grade at the time of the assessment. Mr. Carroll prepared a report, dated February 2, 2006. Mr. Carroll administered the Wechsler Adult Intelligence Scale – Fourth Edition (WAIS-IV)[6] and the VABS to claimant. Claimant complained of drowsiness due to her medications, causing Mr. Carroll to be concerned that the medications might have an adverse effect on claimant's cognitive performance. Mr. Carroll contacted Alicia Ogonowski, the Butte County Behavioral Health (BCBH) clinician working with claimant, to find out if the medications currently prescribed to claimant would affect her cognitive skills. Ms. Ogonowski consulted with the prescribing physician, Dr. Nielson, a psychiatrist at BCBH. Ms. Ogonowski reported that Dr. Nielson did not believe the prescribed medication would negatively affect claimant's cognitive skills. The medications were not listed in the report, nor did Mr. Carroll testify regarding the medications being taken by claimant. He testified that she was yawning and putting her head on the table during the testing. According to Mr. Carroll, administration of the WAIS-IV normally takes an hour. In claimant's case, Mr. Carroll administered the test in short segments, over the course of four days.

D. On the WAIS-IV, a verbal and nonverbal measure of general ability, claimant received a verbal IQ score of 69, a performance IQ score of 74, and a full scale IQ score of 69. Claimant achieved the following subtest scores:

[6] Erroneously referred to in Mr. Carroll's report on page 2 as the WISC-IV.

Verbal Scales		**Performance Scales**	
Information	5	Picture Completion	4
Similarities	5	Picture Arrangement	7[7]
Vocabulary	4	Block Design	7
Comprehension	5	Matrix Reasoning	7
Arithmetic	5[8]	Digit-Symbol Coding	4

E. Mr. Carroll completed the VBAS – Interview Edition, with the assistance of claimant's foster mother, Debra Simpson. Ms. Simpson's ratings of claimant resulted in the following scores:

Domain	**Standard Score**	**%ile Rank Range**	**Adaptive Level**
Communication	31	<0.1	Low
Daily Living Skills	34	<0.1	Low
Socialization	38	<0.1	Low
Adaptive Behavior Composite	23	<0.1	Low

F. The average range for standard scores on the VBAS extends from 85 to 115. Mr. Carroll testified that claimant's scores on the VBAS indicate that she would have great difficulty living independently, and would require a high level of support and structure to be successful.

G. Mr. Carroll concluded that claimant's scores on the WAIS-IV were in the mentally deficient range, with relative strengths in perceptual organization areas and relative weaknesses in verbal comprehension areas. His diagnostic impression states: "It is the opinion of this examiner that data from this assessment substantiates a transition in categories from Learning Disabled to Mentally Retarded."

H. Mr. Carroll testified that the results of his testing were "in a similar range" to the testing performed by Dr. Ganzler. With respect to the testing performed by Dr. Presnall in 1995, where claimant achieved an IQ score in the low average range (83) compared to 69 in 2006, Mr. Carroll stated that the decline in test scores showed that claimant had not made intellectual progress in academic areas since testing was performed in 1998; she achieved similar raw scores, but her IQ score was lower, since it was "normed" to an older age group. Claimant has made very marginal progress in school since her sophomore year. Her peer relations have deteriorated, and she has demonstrated anger management issues. Her academic achievements have declined, and she has not demonstrated an ability to function independently. She requires step by step instruction, constant supervision and redirection, to keep her on task.

[7] This score was inadvertently omitted from Mr. Carroll's written report, but was added by testimony at the hearing.
[8] See footnote 2.

I. At hearing, Mr. Carroll indicated that claimant was appropriately placed in a special education Special Day Class (SDC). According to Mr. Carroll, the focus of claimant's February 2, 2006 IEP meeting was transition from high school. CUSD offered claimant another year of high school (2006-2007 school year) because she did not appear to be ready to transition out of high school. The IEP team did not address the issue of mental retardation as a basis for claimant's eligibility for special education services.

32. *Testimony of Judith E. Sager*

A. Judith Sager is claimant's social worker with California Foster Family Agency. Her understanding of Dr. Chretien's examination of claimant in 1994 was that, as a result of in-utero exposure to drugs and alcohol, claimant suffered brain damage that was not depicted on brain scans, but which severely impaired claimant's "higher level thinking," in areas such as judgment and conscience. Claimant was able to learn and recite rules, but could not follow them; the "knowledge" had no impact on her behavior. Ms. Sager was "surprised" by the 1995 report of Dr. Presnall, which depicted claimant's intellectual functioning at the low-average level. She felt this report was an anomaly that overstated claimant's ability.

B. In Ms. Sager's opinion, claimant has been able to form a meaningful, loving attachment to her foster mother, Debra Simpson. However, claimant's attachments are "childlike," and she has insecurities about whether she is loved. Claimant has had a boyfriend for the past year and a half. Claimant has made poor judgments and engaged in dangerous behaviors, including an incident where she went off with teenagers she did not know, and engaged in drinking and sexual activity. She was found by herself in the woods, the next day, partially undressed and suffering from alcohol poisoning.

C. In describing claimant's decision-making capabilities, Dr. Sager stated that claimant "brain was more like Swiss cheese," meaning that she made occasional good judgments, but her behavior was unpredictable. She does best in tightly controlled environments, with a well-established routine. She does not adapt to change, and cannot be expected to behave in a safe, independent manner. In the past year, claimant has been in treatment with Dr. Charles Nielson, a psychiatrist. Dr. Nielson recently began treating claimant for bipolar disorder. She has been taking Seroquel, a mood stabilizer, which has had a positive effect on claimant's impulsivity and judgment. She has also been prescribed Lamictal, a secondary mood stabilizer, to treat depression. Claimant received mental health counseling with Alicia Ogonowski, a therapist with Butte County Behavioral Health.

D. In summarizing the conclusions of Dr. Nielson, Ms. Sager stated that claimant has a combination of cognitive deficits and mental illness, and that claimant's cognitive deficits prevent her from being able to develop adaptive strategies to cope with her mental illness.

E. Claimant has received services from Liberte Herin, an independent living specialist with Butte County, Children's Services Division, to assist with the transition out of

the foster care system. Claimant has a job at school during lunch, which requires her to make change, but she is under constant adult supervision. According to Ms. Sager, claimant feels she cannot take care of herself, and yet she believes she is "normal," and has unrealistic career aspirations, such as becoming a veterinarian. Despite a loving and supportive foster home and an excellent school program, claimant is still not able to perform the activities of daily living in a safe manner. She is unable to generalize learning over multiple environments, and needs direction broken down into small steps with constant supervision.

F. In the years that Ms. Sager has known claimant, she has continued to have the emotional attachments and reactions of a five-year-old.

33. Jon Nickerson has been claimant's special education teacher at Chico High School for the past four years. He testified concerning his observations of claimant's behaviors and level of functioning. Claimant is in a SDC, consisting of 15 students. Some of claimant's classmates are LD, while others are SED; one student has mental retardation with autism. In Mr. Nickerson's opinion, claimant "falls more toward cognitive than ED." Claimant's impulsivity and ADHD have been less of a problem since her freshman year. Her math and reading comprehension skills are currently at the third to fourth grade level. Her expressive language is at the sixth grade level, but her composition skills are at the second to third grade level. When claimant entered high school, her academic abilities placed her at 'borderline" RSP (i.e., mainstreaming in a regular program, with "pull-out" instruction by a resource specialist teacher). However, behavior issues caused her to be placed in a SDC. He feels she has "plateaued" academically this year and has regressed in some areas. Claimant has "hit a ceiling" in the types of material she can master. She has not moved beyond concrete learning to more abstract learning. She participates in a Regional Occupational Program (ROP), a type of work-study, in which she is closely supervised. Her difficulties dealing with abstract concepts means she is not able to analyze tasks, in order to do a job without support. She is not able to follow a schedule, or a cooking recipe, without monitoring.

34. Marilee Salamon is a social worker with Butte County Children's Services, providing case management and interface with foster families. She has been assisting claimant in her effort to obtain regional center services. Ms. Salamon has concerns about claimant's ability to take care of herself without support and supervision, after she transitions out of foster care. She testified concerning her observations of claimant in the community. On one occasion when they went to get something to eat, claimant could not stand in line without talking to others; she had difficulty ordering; and she was unable to figure out how much to pay for the food.

35. Debra Simpson, claimant's foster mother, testified concerning her observations of claimant's behaviors. Claimant has lived with her for the past nine years, except for a four-month period in 2004, when Ms. Simpson felt she could not handle claimant's behaviors. According to Ms. Simpson, claimant befriends people easily, but is often manipulated by others. Claimant "likes anyone who likes her." She will go with

strangers, and has put herself in danger. Claimant has been on numerous medications, with limited effect.

Claimant has chores at home, including cleaning her room, and cleaning the kitchen. She is unable to perform simple household tasks without constant instruction and redirection. She is able to brush her teeth, but is otherwise careless about her personal hygiene, and must be reminded to comb her hair. She can pour herself a bowl of cereal for breakfast. She is able to use a microwave, but not the stove, because she has left food unattended on the stove on prior occasions. She is unable to set an alarm clock to get herself up in the morning. She would be unable to live independently. She would not be able to pay her bills. She cannot read a bus schedule to use public transportation. She does not drive. Her attention span is poor, and she does not follow directions easily. She is distractible, and forgets what she is doing. She has no real concept of time or schedules, i.e., needing to be at a particular place and a specified time. She cannot follow written directions on her own, but requires verbal instruction; she could follow a written checklist, but would need to be reminded to look at the list.

Claimant had a summer job, under the direction of Mr. Nickerson. Claimant worked in the kitchen and did outside maintenance at a college, under direct supervision.

36. *Testimony of Jan Freemon, Ph.D.*

A. Dr. Freemon is a licensed clinical psychologist employed by FNRC. Dr. Freemon reviewed records and reports pertaining to claimant, and was a member of the ID team that reviewed claimant's eligibility for regional center services in 2004 and 2005. Dr. Freemon considered claimant's history of psychometric testing that, except for Mr. Carroll's 2006 testing, showed claimant as having borderline to low average intelligence. Dr. Freemon also considered claimant's extensive history of early environmental deprivation, plus psychiatric and emotional problems. Dr. Freemon concluded that claimant did not suffer from a developmental disability independent from other incapacitating conditions, including psychiatric and/or specific learning disabilities.

B. Regarding the May 2004 report of Dr. Ganzler, Dr. Freemon noted that the WRIT, administered to claimant by Dr. Ganzler, has only four subtests, and is a less comprehensive test of cognitive ability than the WISC-III, which has 11 subtests. FNRC does not rely on the WRIT to determine eligibility for regional center services. She also noted that Dr. Ganzler's calculation of the "grand mean" is not a standard practice, and she did not believe it was a valid measure of claimant's intellectual and adaptive functioning. Dr. Ganzler's test results did not show that claimant suffered from global impairments, in that her visual/performance IQ score on the WRIT was in the low average range, consistent with a learning disability. Claimant's executive function deficits, while severe, are not "global," since they affect only judgment and decision-making. She noted Dr. Ganzler's conclusion that executive dysfunction had adversely impacted claimant's adaptive functioning. With respect to the test results obtained by Mr. Carroll, Dr. Freemon stated that the measurement of intelligence is a constant factor, but that other factors may influence how

intellectual capacity is demonstrated. Dr. Freemon noted that many factors can depress test scores, including motivation, focus/concentration, fatigue, stress, and emotional difficulties. It appeared from Mr. Carroll's description of claimant's fatigue and inattention during testing, which caused Mr. Carroll to give the WAIS over the course of several days, that claimant was having difficulty with focus and processing speed, thereby adversely affecting the test results. ADHD, and executive function deficits can play an obvious role in depressing IQ scores, since if a person does not pay attention, it is hard to retain in long-term memory what the person is trying to learn.

C. Regarding the overall decline in claimant's test scores between 2001 and 2006, Dr. Freemon noted that high school classes focus more heavily on reading and math skills. Therefore, factors such as attention and behavior problems tend to have a greater impact on verbal IQ scores as children get older. If a student is not advancing at school, s/he is not able to demonstrate the reading and math skills expected at that age/grade level, which will depress cognitive scores.

D. Dr. Freemon stated that executive function deficits are typically found in association with psychiatric and social deficits, and are not "global" cognitive deficits. Judgment and impulse restraint are considered to be psychiatric disabilities, and are components of ADHD. The modalities of treatment for executive function disorders include behavioral intervention and cognitive therapy, to train the person to exercise restraint, or mentally rehearse to control situations. These treatments are psychiatric interventions, which are not typical of the treatment for persons with mental retardation.

37. Lisa Benaron, M.D., is the Medical Director of FNRC. She did not personally evaluate claimant. According to Dr. Benaron, ADHD is an executive function disorder demonstrating a lack of internal control, relating to an inability to modulate attention, focus, and filter out distractions. RAD is a psychiatric diagnosis. According to Dr. Benaron, RAD can manifest itself not only by withdrawal, and a failure to form attachments, but also by overgeneralization, and inadequate boundary delineation. Behaviors associated with this manifestation of RAD include the individual believing "everyone is my friend," and a willingness to befriend and trust anyone who shows attention to the individual. Claimant's overall profile is more indicative of a learning disability than mental retardation, with psychiatric overlays. Claimant has a problem, as demonstrated in cognitive testing, with verbal processing. For example, if claimant is told something, she does not remember it later, and cannot execute verbal instructions. This is a problem typically seen in conjunction with ADHD. She has relative strengths in visual learning. Her test scores show her actual academic achievement lower than her IQ, indicating a learning disability.

38. Claimant was present during most of testimony on the first day of the administrative hearing, but did not testify in her own behalf. She drew pictures, and was intermittently attentive to the testimony being given. She occasionally asked questions if she did not understand something that was being said. At one point during the testimony of Mr. Carroll, after hearing him characterize her disability as "mild mental retardation," claimant stated, "I am not mentally retarded."

39. The parties do not dispute that claimant has a disability that originated before the age of 18, can be expected to continue indefinitely, and constitutes a substantial handicap for claimant; claimant has a condition that has resulted in a major impairment in cognitive and/or social functioning in at least the following areas: learning; self-care; self-direction; capacity for independent living; and economic self-sufficiency.

40. The Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV) defines mild mental retardation as an IQ level of 50-55 to approximately 70. The diagnostic criteria for mental retardation are the following:

> A. Significantly subaverage intellectual functioning: an IQ of approximately 70 or below on an individually administered IQ test (for infants, a clinical judgment of significantly subaverage intellectual functioning)
> B. Concurrent deficits or impairments in present adaptive functioning (i.e., the person's effectiveness in meeting the standards expected for his or her age by his or her cultural group) in at least two of the following areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety.
> C. The onset is before age 18 years.

41. The DSM-IV describes the diagnostic features of learning disorders as follows:

> Learning Disorders are diagnosed when the individual's achievement on individually administered, standardized tests in reading, mathematics, or written expression is substantially below that expected for age, schooling, and level of intelligence. The learning problems significantly interfere with academic achievement or activities of daily living that require reading, mathematical, or writing skills. A variety of statistical approaches can be used to establish that a discrepancy is significant. *Substantially below* is usually defined as a discrepancy of more than two standard deviations between achievement and IQ. A smaller discrepancy between achievement and IQ (i.e., between 1 and 2 standard deviations) is sometimes used, especially in cases where an individual's performance on an IQ test may have been compromised by an associated disorder in cognitive processing, a comorbid mental disorder or general medical condition, or the individual's ethnic or cultural background. If a sensory deficit is present, the learning difficulties must be in excess of those usually associated with the deficit. Learning Disorders may persist into adulthood.

LEGAL CONCLUSIONS

Applicable Statutes and Regulations

1. Welfare and Institutions Code section 4512, subdivisions (a), and (l), state:

> (a) "Developmental disability" means a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature.
>
> [¶]…[¶]
>
> (l) "Substantial disability" means the existence of significant functional limitations in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person:
>
> (1) Self-care.
>
> (2) Receptive and expressive language.
>
> (3) Learning.
>
> (4) Mobility.
>
> (5) Self-direction.
>
> (6) Capacity for independent living.
>
> (7) Economic self-sufficiency.
>
> Any reassessment of substantial disability for purposes of continuing eligibility shall utilize the same criteria under which the individual was originally made eligible.

2. California Code of Regulations, title 17, section 54000, states:

> (a) “Developmental Disability" means a disability that is attributable to mental retardation, cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation.
>
> (b) The Developmental Disability shall:
>
> (1) Originate before age eighteen;
>
> (2) Be likely to continue indefinitely;
>
> (3) Constitute a substantial disability for the individual as defined in the article.
>
> (c) Developmental Disability shall not include handicapping conditions that are:
>
> (1) Solely psychiatric disorders where there is impaired intellectual or social functioning which originated as a result of the psychiatric disorder or treatment given for such a disorder. Such psychiatric disorders include psycho-social deprivation and/or psychosis, severe neurosis or personality disorders even where social and intellectual functioning have become seriously impaired as an integral manifestation of the disorder.
>
> (2) Solely learning disabilities. A learning disability is a condition which manifests as a significant discrepancy between estimated cognitive potential and actual level of educational performance and which is not a result of generalized mental retardation, educational or psycho-social deprivation, psychiatric disorder, or sensory loss.
>
> (3) Solely physical in nature. These conditions include congenital anomalies or conditions acquired through disease, accident, or faulty development which are not associated with a neurological impairment that results in a need for treatment similar to that required for mental retardation.

3. California Code of Regulations, title 17, section 54001, subdivisions (a) and (b), state as follows:

(a) “Substantial disability” means:

(1) A condition which results in major impairment of cognitive and/or social functioning, representing sufficient impairment to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential; and

(2) The existence of significant functional limitations, as determined by the regional center, in three or more of the following areas of major life activity, as appropriate to the person's age:

(A) Receptive and expressive language;

(B) Learning;

(C) Self-care;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living;

(G) Economic self-sufficiency.

4. California Code of Regulations, title 17, section 54002, states as follows:

“Cognitive” as used in this chapter means the ability of an individual to solve problems with insight, to adapt to new situations, to think abstractly and to profit from experience.

Eligibility

5. In order to qualify for regional center services, claimant must have a developmental disability. As set forth in section 4512, subdivision (a), “Developmental disability” includes mental retardation, cerebral palsy, epilepsy, and autism; it also includes disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature. California Code of Regulations, title 17, section 54000, subdivisions (c)(1) and (c)(2), state specifically that a handicapping condition that is solely a psychiatric disorder, or solely a learning disability, does not meet the definition of a developmental disability.

6. Claimant was initially made provisionally eligible for regional center services by FNRC in 1990, as part of the "Early Start" program, with a designation of "mental retardation-mild" (Finding 5). However, in 1996, FNRC terminated claimant's eligibility for regional center services, determining that she was not mentally retarded, and did not otherwise have a developmental disability within the meaning of applicable law and regulations (Finding 25). FNRC's determination at that time was based on cognitive testing, including that of Dr. Presnall that placed claimant in the low-average range of intelligence (Finding 21). Testing by Dr. Rauch, Dr. Chretien, and Dr. Presnall, all pointed to frontal lobe dysfunction, with Dr. Rauch finding strong evidence of ADHD (Finding 18), and Dr. Chretien diagnosing executive function disorder (Findings 19 and 20). Claimant received special education services, including nonpublic school placement in a treatment facility, based on serious emotional disturbance. Subsequent cognitive testing performed by CUSD in 1998 and 2001 confirmed claimant's cognitive functioning in the low-average to average range (Findings 27 and 28.B). Claimant's eligibility for special education services in junior high school was categorized as a specific learning disability, based on deficits in processing speed.

Claimant did not receive an actual diagnosis of mental retardation until Dr. Ganzler's 2004 report (Finding 29). However, as noted in the testimony of Dr. Freemon, Dr. Ganzler's reliance on a "grand mean" score of 68 to justify a diagnosis of mild mental retardation is not within the general standard of practice for a psychologist (Finding 36.B). Furthermore, claimant's low average Visual IQ score of 84 on the WRIT, when compared to claimant's Verbal IQ of 70, is much more indicative of a learning disability, in that it demonstrates a significant discrepancy between achievement and IQ (Findings 29.C. and 41). The cognitive testing most recently performed by Mr. Carroll did reveal global deficits on the WAIS-IV, with a full-scale IQ score of 69 (Finding 31). However, given claimant's history of cognitive scores in the low-average range, it is more likely that other factors are depressing claimant's current scores, such as motivation, focus/concentration, fatigue, stress, and/or emotional difficulties (Finding 36.B).

7. It was not established by a preponderance of the evidence that claimant is mentally retarded or that she has a disabling condition that is closely related to mental retardation within the meaning of section 4512, subdivision (a). The essential feature of mental retardation as set forth in the DSM-IV is "significantly subaverage general intellectual functioning that is accompanied by significant limitation in adaptive functioning in at least two of the following skill areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health and safety." "Significantly subaverage intellectual functioning" is defined as an IQ of about 70 or below. As previously noted, claimant's IQ has consistently been well above 70, and more recent low scores are not indicative of claimant's underlying cognitive ability. Claimant's low-average IQ scores also rule out a determination that claimant has a "closely related" disabling condition. The Court in *Mason v. Office of Administrative Hearings* (2001)89 Cal.App.4th 1119, at p. 1129, stated in part:

> …The fifth category condition must be very similar to mental retardation, with many of the same, or close to the same, factors required in classifying a person as mentally retarded. Furthermore, the various additional factors required in designating an individual developmentally disabled and substantially handicapped must apply as well.

8. There was some evidence to indicate that claimant requires treatment similar to that required by individuals with mental retardation. She needs to have a highly structured environment, with instructions broken down into small steps, with repetition and supervision (Findings 32.E. and 33). However, her impulsivity, acting out, and impaired decision-making, all require treatment with medication and behavior modification, which is quite different from the interventions used with mentally retarded individuals (Finding 36.D). Furthermore, it was not demonstrated that the "overlearning" techniques typically applied to individuals with mental retardation would be successful in addressing claimant's executive function disorders, including ADHD.

Conclusion

9. Claimant's case is a complex constellation of issues, which have been variously diagnosed as ADHD, RAD, executive function disorder, specific learning disability, and, most recently, bipolar disorder. Medication, counseling, behavioral interventions, and educational support, have all been implemented in an attempt to modulate claimant's impulsivity and improve her adaptive functioning. However, whatever label is placed on claimant's condition, it is clear that her impaired intellectual functioning, and her impaired social functioning, originated as a result of either a psychiatric disorder or a learning disability. Learning disabilities and psychiatric disorders do not constitute a developmental disability within the meaning of Welfare and Institutions Code section 4512, subdivision (a), and are in fact specifically excluded from the definition of developmental disability under California Code of Regulations, title 17, section 54000, subdivisions (c)(1) and (c)(2).

10. Claimant has not sustained her burden of proof at this time to establish that she is eligible for FNRC services under the criteria set forth in applicable laws and regulations.

ORDER

Claimant Rachel A.'s appeal from FNRC's denial of services is DENIED. Rachel A. is not eligible for services under the Lanterman Act.

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days of receipt of this Decision.

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Dated: _____

_____
CATHERINE B. FRINK
Administrative Law Judge
Office of Administrative Hearings